

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

Benjamin Case, *et al.*,

Plaintiffs,

v.

The City of New York, *et al.*,

Defendants.

Case No. 14-cv-09148 (JLR)(BCM)

NOTICE OF MOTION

PLEASE TAKE NOTICE that, upon the Memorandum of Law dated April 27, 2023 in support of this Motion; the Declaration and Exhibits submitted herewith; and all of the prior pleadings and proceedings had herein, Plaintiff Kushneir will move this Court, before the Honorable Jennifer L. Rochon, United States District Judge, at the United States Courthouse for the Southern District of New York, located at 500 Pearl Street, New York, New York, 10007, for an Order *in limine*:

1. Prohibiting Defendants from mentioning any dismissed claims or Plaintiffs to the jury;
2. Precluding Defendants from introducing any awards and commendations any law enforcement witness has received;
3. Precluding Defendants from (1) misleading the jury and suggesting that individual Defendants will not be indemnified or will otherwise be personally responsible for any damages award and (2) appealing to jurors as taxpayers, given that the City will pay any award;
4. Excising and declining to give any nominal damage instruction;
5. Barring the City from introducing any evidence inconsistent with 30(b)(6) testimony;
6. Giving the jury missing witness charges as to four missing witnesses, and barring Defendants from introducing any testimony or evidence speculating about how those witness would testify;
7. Barring Defendants from introducing any speculative or third party testimony about Plaintiff's intent, or about facts unknown to Defendants Esposito and Maldonado at the time of Plaintiff's arrest;

8. Precluding Defendants from introducing their proposed trial exhibit C;
9. Allowing Plaintiff's counsel to argue specific dollar amounts to the jury;
10. Directing that if Defendants want to use special interrogatories, they must serve them before the trial begins;
11. Allowing Plaintiff to present the voluminous history of protest litigation in New York City through a Rule 1006 summary, rather than thousands of pages of court records; and
12. Granting any other relief the Court finds appropriate.

PLEASE TAKE FURTHER NOTICE, that as the Court has directed (ECF No. 185):

1. With this Notice, today, April 27, 2023, Plaintiffs are filing their motions *in limine*; and
2. By May 5, 2023, Defendants shall file their Opposition, if any.

DATED: April 27, 2023
Queens, NY

/s/

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